

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

DERWIN FRAZIER	§	
and VERONICA FRAZIER	§	
	§	
V.	§	CIVIL ACTION NO. G-12-127
	§	
WELLS FARGO BANK, N.A., ET AL.	§	

OPINION AND ORDER

On March 22, 2013, Magistrate Judge Froeschner granted the Motion to Proceed on Appeal *In Forma Pauperis* of Plaintiffs, Derwin Frazier and Veronica Frazier. Now before the Court is the “Motion to Reconsider Order Granting Plaintiffs’ Motion to Proceed *In Forma Pauperis* and Objection to Plaintiffs’ Motion to Proceed *In Forma Pauperis*” of Defendants Mortgage Electronic Registrations Systems, Inc. and Wells Fargo Bank, N.A.. The Defendants want the Court to find that the Plaintiffs’ appeal is not taken in good faith and to vacate Judge Froeschner’s Order.

Following the foreclosure of their mortgage, the Plaintiffs, acting *pro se*, filed this cause of action against the Defendants in state court accusing them of breach of contract and various fraudulent activities. The Defendants removed the case and promptly filed Motions to Dismiss for failure to state a plausible claim. Judge Froeschner met with the Parties and ordered the Plaintiffs’ to file an Amended Complaint. In response to the Amended Complaint the Defendants, once again, moved to dismiss the complaint for failing to state a claim. Thereafter, in a Report and Recommendation dated November 20, 2012, which is incorporated herein by reference, Judge Froeschner recommended dismissal of the complaint because, despite affording the Plaintiffs the


opportunity to plead their best case, it was “impossible to understand the factual bases” of their purported claims. Then, on January 2, 2013, this Court adopted the Report and Recommendation of Judge Froeschner, granted the Defendants’ Motions to Dismiss the Plaintiffs’ First Amended Complaint and entered a Final Judgment dismissing Plaintiffs’ action on the merits.

Despite being given ample opportunity to allege a cognizable claim, the Plaintiffs were unable to do so. To authorize them to proceed on appeal *in forma pauperis* would permit them to continue to pursue a lawsuit that this Court determined to have no arguable basis in law or fact. Hicks v. Garner, 69 F.3d 22, 24 (5th Cir. 1995) Because the Plaintiffs’ proposed appeal would be frivolous, the Court FINDS the appeal would not be taken in good faith.

It is, therefore, **ORDERED** that the Defendants’ Motion to Reconsider (Instrument no. 45) is **GRANTED**; the Order (Instrument no. 44) granting the Plaintiffs’ permission to proceed *in forma pauperis* on Appeal, signed by Magistrate Judge Froeschner on March 22, 2013, is **VACATED**; and the Plaintiffs’ Motion to Proceed on Appeal *In Forma Pauperis* (Instrument no. 42) is **DENIED**.

Any further relief sought by Plaintiffs on this matter must be addressed to the United States Court of Appeals for the Fifth Circuit. Baugh v. Taylor, 117 F. 3d 197, 202 (5th Cir. 1997)

DONE at Galveston, Texas, this 9th day of April, 2013.



Gregg Costa
United States District Judge